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HB 190

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House Bill 190 Testimony
Stream access at County bridges
Bob Ream, representing self

Thank you for the opportunity to comment today and I congratulate the sponsor and all interested parties for coming together on a compromise bill. I've been a canoeist for over 50 years and have paddled thousands of miles on rivers and lakes around the country. I served on this committee for 8 sessions (1983 through 1997) and Chaired the committee twice.

I will provide some historical perspective as I was the chief sponsor of the original Stream Access Law in 1985. Like HB190 before you today, HB265 in that session, was a product of compromise with many interested parties. It was a bipartisan bill. The only other sponsor listed is Bob Marks, then House Republican leader, also in a 50-50 tied House!

In December 1982, shortly after I was first elected and just weeks before the 1983 session, two District Court decisions came down, one on the Dearborn River (Montana Stream Access Coalition vs. Curran) and the other on the Beaverhead River (Montana Stream Access Coalition vs. Hildreth). Immediate reaction from several directions resulted in 7 bills introduced in that session, all of which failed due to a lack of consensus. However HJR36 resulted in an interim committee that studied the issue in depth with 5 meetings, including an 8 hour public hearing in March 1984. The interim committee report is an excellent source of information on recreational use of waterways.

The Dearborn River case had some similarities to the Ruby River case that resulted in HB190 coming before you today. Mr. Curran bought the Dearborn Ranch and decided to keep all "intruders" off the Dearborn River at a highway bridge access. Many users had been accessing the river for decades without any problems and were outraged. It became very bitter and resulted in several nasty altercations at the access point.

On May 15, 1984 the Montana Supreme Court issued its decision in the Curran case, affirming broad recreational use rights of the public on Montana's waterways, using the Constitution and public trust doctrine as bases for its decision. The decision considerably narrowed the choices available to the legislature and the interim committee. After two more meetings, the interim committee came up with two bill drafts, one governing recreational use of state waters and the other on posting land for the offense of criminal trespass. However, over the next 6-8 months a coalition of interested parties got together on their own, worked out their differences and came up with the compromise that ultimately became HB265 as introduced. They deserve the credit for crafting a good bill. Both committee bills were dropped. Minor amendments were made, after some back and forth with the Senate, and HB265 became law. Though challenged several times, Montana's Stream Access Law has stood the test of time to this day.

HB190 is a further clarification of this law. I believe it complies with the District Court decision and the Attorney General's opinion on the Ruby River case and is consistent with earlier Supreme Court decisions and Montana's Stream Access Law.

There is one important point I would like to make. Section 23-2-311(1) MCA of the Stream Access Law provides that the public "may, above the ordinary high water mark, portage around barriers in the least intrusive manner possible". 23-2-301(1) MCA states, ""Barrier" means an artificial obstruction located in or over a water body, restricting passage on or through the water, which totally or effectively obstructs the recreational use of the surface water at the time of use. A barrier may include but is not limited to a bridge or fence or any other manmade obstacle to the natural flow of water."

There are many bridges in Montana, whether state, county, or private, that provide barriers to safe passage, particularly at high water levels. They may be too low or, because of construction design, create dangerous water conditions. If I floated down to such a bridge, by the Supreme Court decisions, I would have a right to portage around it, no matter where the fence was attached, no matter the ownership of the land or right-of-way. Thus, being a portage, it would seem that it would also be an access point.

Section 23-2-311(3)(e) MCA provides that landowners must bear the cost of establishing a portage route around such barriers. However, Section 3 of HB190 clarifies that the materials and/or costs may be borne by the department, and the department may even install a method that provides public passage while controlling livestock, in consultation with the landowner. HB190 treats landowners more favorably than existing law, with a compromise that meets the needs of recreational users. I commend the sponsor, and all the interested parties for coming up with a workable solution to this problem. As with HB265 in 1985, this is a good example of people working together for the common good.

Thank you for your consideration and time and for the work you do on this committee.

Bob Ream
521 Clarke St.
Helena, MT 59601